UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 25, 2020

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Betty McCollum
Chair
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chair McCollum:

On behalf of the U.S. Environmental Protection Agency, I am enclosing responses to questions for the record following the February 5, 2020 hearing before the Subcommittee on Interior, Environment, and Related Agencies entitled, "Strengthening Community Recycling Programs: Challenges and Opportunities."

The responses to your questions are provided as an enclosure to this letter. If you have any further questions, please contact me, or you staff may contact Pamela Janifer in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-6969 or janifer.pamela@epa.gov.

Sincerely,

Joseph A. Brazauskas, Jr.
Associate Administrator

Enclosure

cc: The Honorable David Joyce, Ranking Member

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Strengthening Community Recycling Hearing
February 5, 2020

Questions for the Record
U.S. Environmental Protection Agency

Questions from Chair McCollum

National Recycling Strategy

I have long felt that one of the impediments to increasing our recycling rates is that we currently lack a comprehensive national strategy for recycling. That's why as part of the Agency's FY 2020 appropriation, I pushed to include a requirement that EPA develop a National Recycling Strategy. The National Recycling Framework report from last November is a step in the right direction and look forward to the release of a comprehensive national recycling strategy later this year.

McCollum Q1: Can you preview for us some of the elements that will be included in the Strategy?

RESPONSE: The National Recycling Strategy ("the Strategy") begins with the foundation established by the *National Framework for Advancing the U.S. Recycling System* and outlines opportunities to improve the U.S. recycling system. The development of the Strategy will be guided by principles including:

- **Promoting action based on leadership, long-term partnership, and collaboration;**
- **Building on past progress, experience, and historical trends;**
- **Recognizing and addressing state and local considerations unique to the recycling system; and**
- **Identifying areas that require targeted actions to address immediate needs.**

Action areas will be focused on addressing key challenges facing the U.S. recycling system, as outlined in the *National Framework*, including:

- **Reducing contamination within the recycling stream;**
- **Improving performance of the materials recovery system;**
- **Improving and/or developing recycled material end markets, including strategies based on regional sources of feedstock; and**
- **Developing metrics that support goals and measure progress for each action area.**

In recognition that collective and collaborative commitments are best achieved when there are common goals, all interested stakeholders will be encouraged to work with EPA in developing national recycling goal(s) in 2020 and 2021. The national recycling goal(s) will

provide a benchmark for progress to inspire innovation, investment, and action across the American recycling system.

McCollum Q2: What will EPA's role be in executing that strategy?

RESPONSE: The Strategy will identify actions that are appropriate for EPA to lead. Specifically, continuing efforts to improve measurement, establishing and implementing efforts to track progress towards reaching the national recycling goal(s), and periodically reporting out on progress. EPA will identify and engage other federal agencies that could support actions in the strategy.

EPA intends to continue working collaboratively with the America Recycles Network and other stakeholders to implement actions outlined in the Strategy.

McCollum Q3: What resources will you need in order to effectively lead this effort?

RESPONSE: For FY2021, EPA has requested $4.3 million and 5 FTE for the Waste Minimization and Recycling program, which funds the America Recycles and reducing food loss and waste efforts.

Making Americans Better Recyclers

One of the challenges that EPA and other recycling stakeholders have consistently identified is that it can be confusing for consumers to know how to recycle correctly. We also know that helping consumers become better recyclers is one of the most effective ways to prevent contamination and reduce processing costs within the supply chain. I have tried to navigate through some of the online resources on EPA's website. I think there is a lot more that EPA could be doing to help people understand how to become better recyclers within their communities.

McCollum Q4: What resources are EPA currently employing to help consumers become better recyclers?

RESPONSE: Through the America Recycles Initiative, the Education and Outreach Workgroup is developing key messages on recycling issues for public and media audiences. The workgroup has compiled input from major businesses, industry associations, local governments, and other stakeholders from across the recycling system.

In November 2019, the Workgroup released a draft infographic depicting some facts about the importance of recycling for job creation and its positive economic impacts, which will be finalized later this year. EPA also provides informational resources to inform outreach on recycling, such as the Waste Reduction Model (WARM), the Sustainable Materials Management Facts and Figures Report, and the Recycling Economic Indicators Report. These EPA products, and other products developed by the Workgroup, may be utilized by all the organizations participating in the America Recycles effort.

In May 2020, EPA produced three videos and one radio public service announcement (PSA) to encourage households to recycle more and correctly as well as not litter personal protective equipment (PPE) or place it in recycling collection carts. The official press release, PSAs, including a recorded message from EPA Administrator Andrew Wheeler, is publicly available on the Agency's website (https://www.epa.gov/newsreleases/epa-stresses-importance-recycling-and-proper-disposal-personal-protective-equipment). Additional information has also been added to our website entitled Recycling and Sustainable Management of Food During the Coronavirus (COVID-19) Public Health Emergency (https://www.epa.gov/coronavirus/recycling-and-sustainable-management-food-during-coronavirus-covid-19-public-health).

McCollum Q5: Beyond an enhanced online experience, what are the other opportunities that EPA sees to increase consumer understanding of how to recycle correctly?

RESPONSE: In 2020, EPA plans to initiate a pilot educational campaign on plastic film to encourage recycling through retail/alternative collection programs. The intent is to decrease the amount of plastic film entering curbside collection programs, one of the most common recycling stream contaminants. In addition, the Agency intends to partner with organizations like the National Environmental Education Foundation to educate and inspire consumers to recycle right as well as reduce food waste.

The environmental NGO community has a long history promoting recycling and has a strong network and resources that could be very helpful in achieving EPA's goals.

McCollum Q6: Has EPA tried to engage with environmental NGOs on recycling? If so, which groups has the Agency contacted? What has been the response to those efforts?

RESPONSE: The Agency has engaged with several nonprofit organizations on recycling issues through the America Recycles Initiative. The following nonprofit organizations have signed the America Recycles Pledge, as of May 15, 2020:

- **Keep America Beautiful**
- **Recycle Across America**
- **National Environmental Education Foundation**
- **Environmental Research and Education Foundation**
- **The Recycling Partnership**
- **National Recycling Coalition**
- **Green Blue Institute and Sustainable Packaging Coalition**
- **Don't Waste Durham**
- **Keep Thomas County Beautiful**
- **Keep California Beautiful**
- **The Metropolitan Environmental Trust**

While several nonprofit organizations have signed the pledge, the following have taken on leadership roles in implementing the America Recycles efforts to-date.

- **Keep America Beautiful**

- **Environmental Research and Education Foundation**
- **The Recycling Partnership**
- **Sustainable Packaging Coalition**
- **U.S. Chamber of Commerce Foundation**

Note that EPA anticipates additional nonprofit entities to become more engaged as part of its 2020 efforts to work with the pledge signatories.

EPA Recycling Office Resources

Recycling is just one part of the sustainability and conversation strategies that the Agency is pursuing. To help us to get a better sense of the scale of EPA's activities, can you tell us a little bit more about the team at EPA that leads this work?

McCollum Q7: What is the FY 2020 budget for the Office of Conservation and Resource Recovery?

RESPONSE: The FY 2020 budget for the RCRA Program Area is $112.8 million of which $8.9 million is for Waste Minimization and Recycling.

Q7b: How many FTE onboards are there currently?

RESPONSE: For FY 2020, the RCRA Program Area has a ceiling of 503.6 FTE of which 43.4 FTE are for Waste Minimization and Recycling.

Q7c: How are you spread out between headquarters and the regional offices?

RESPONSE: In FY 2020, overall resources for the RCRA Program Area were $52.3 million in Headquarters and $60.5 million in Regions. For Waste Minimization and Recycling, $4 million is in Headquarters and $4.9 million in Regions.

McCollum Q8: What was the budget for that office in FY 2019?

RESPONSE: The FY2019 budget for the RCRA Program Area was $108.8 million of which $8.7 million was for Waste Minimization and Recycling.

Q8b. How many FTE were on board as of the end of FY 2019?

RESPONSE: As of the end of FY 2019, the RCRA program had 501 FTE on board.

McCollum Q9: Are you currently at your FY 2020 FTE target?

RESPONSE: At mid-year FY 2020, the RCRA program has not yet reached its 2020 FTE ceiling.

Q9b: If not, what is that target, and what are the Agency's plans and expected timeline to reach that target?

RESPONSE: The program is currently hiring staff and plans to be at our FTE ceiling by the end of FY 2020.

Questions from Mr. Joyce

National Framework for Advancing the U.S. Recycling System

Last November, after a year of collaborating with stakeholders from across the U.S. recycling system, EPA released the *National Framework for Advancing the U.S. Recycling System*.

Joyce Q1: Please explain the key recycling challenges EPA and its partners identified in the *National Framework.*

RESPONSE: Some of EPA key recycling challenges are:

- **Consumer confusion about how to recycle, which contributes to non-recyclable materials entering the recycling stream and recyclable material going to landfills;**
- **Outdated processing infrastructure that needs investment, which is limiting our current capacity to produce high-quality recycled products; having been designed to process the recyclable streams from 30 years ago, many of our materials recovery facilities are ill-equipped to manage today's diverse and evolving waste stream;**
- **Lack of domestic markets for recycled materials and products, which is negatively impacting supply;**
- **Financial challenges resulting from decreased income from the sale of recyclables and increased processing costs due to contamination; and**
- **Different state and municipal approaches to defining, tracking, and measuring recycling, which impacts our ability to set goals and track progress.**

Joyce Q2: How will the recycling actions outlined in the *National Framework* help guide and develop the nation's domestic recycling infrastructure to be competitive in a changing international system and help spur economic growth and create jobs?

RESPONSE: Recycling infrastructure in the U.S. has not kept pace with our rapidly changing recyclables stream. While manufacturers may design new materials and products that are technically recyclable, they may not be physically recyclable through the existing infrastructure, most of which was designed to handle the material stream of 30 years ago, which was focused mostly on paper recovery. Investments and innovation in infrastructure are needed to help address these issues and create recycling system in the U.S. that is more resilient.

Under the *National Framework*, EPA and others are working with stakeholders to enhance the U.S. recycling infrastructure by strengthening domestic markets for recycled materials

by undertaking efforts to improve the quality of materials as well as stimulate demand. For example, EPA is:

- **Developing a list of funding opportunities for infrastructure investments nation-wide.**
- **Supporting the enhancement of an existing map of recycling infrastructure that is currently available in this country to service millions of Americans' recycling needs. The map can help identify potential service gaps in collection and processing capabilities in the U.S. and could be used to inform future investments.**
- **Supporting the expansion of the web-based clearinghouse of recycling information being developed by the Chamber of Commerce Foundation. The clearinghouse will provide one-stop access to information on best practices, tools and educational materials, research results, and government, business, and community efforts.**
- **Releasing a *Federal Register* notice soliciting comments on the Comprehensive Procurement Guidelines, or CPG program, which provides recycled content recommendations to agencies for an array of materials for procurement.**
- **Launching a voluntary incentive-based initiative pilot to increase demand for recycled materials, building from the Association of Plastics Recyclers Demand Champions Program.**

In addition, the FY21 President's Budget proposal identifies actions that the Agency proposes to support infrastructure enhancement. In FY 2021, EPA proposes focusing $4.25 million to improve the U.S. recycling system and prevent food loss and waste by implementing additional actions, including performing a needs assessment and implementing two grant programs, which will be articulated and expanded upon in the National Recycling Strategy.

These actions will enhance infrastructure practices and help the country move towards a more resilient recycling infrastructure system.

Joyce Q3: What work does EPA have planned over the coming year to further the *National Framework's* recycling goals? Does EPA have the necessary resources and staff to do so or will additional resources be needed?

RESPONSE: With existing resources and staff, EPA will be undertaking the following efforts over the coming year:

- **Providing national leadership and direction on approaches to reduce environmental impacts, increase safe and effective reuse/recycling of materials, and reduce food waste;**
- **Partnering with a wide range of stakeholders (industry, governments, non-profits, and others) to implement efficient and innovative solutions that help protect human health and the environment through improved materials management, reduced waste generation, and improved waste utilization;**
- **Improving and expanding existing metrics, identifying critical data gaps, and gathering and providing high-quality scientific information and data; and**
- **Implementing targeted, incentive-based programs to encourage participants to modify business practices to increase recycling and reduce food waste, enabling**

industries to efficiently conserve resources, save money, and increase competitiveness.

Joyce Q4: What lessons learned from the *Winning on Reducing Food Waste Initiative* were applied to the *America Recycles* initiative?

RESPONSE: The *Winning on Reducing Food Waste Initiative* is a federal agency-focused effort to improve coordination among the U.S. Department of Agriculture (USDA), Food and Drug Administration (FDA), and EPA on shared goals to reduce food loss and waste.

Initial activities were focused on convening major businesses, governments, non-profits, and other organizations to discuss key issues regarding food loss and waste and to identify ways to work together toward shared goals.

These initial events—including roundtable dialogues and other summit-like events to engage stakeholders—were used as a model for the America Recycles Initiative.

Recycling and Waste Assistance to Coastal Communities

Preventing waste – particularly plastics – from getting into our vital waterways is important to many areas in my district. Constituents who live in coastal communities along Lake Erie want to ensure that waste is recycled and does not end up polluting our lakes and rivers or impacting our wildlife and drinking water sources.

Joyce Q5: Given EPA has limited authority under the Resource Conservation and Recovery Act (RCRA) to regulate non-hazardous waste, what programs and resources does EPA have to assist communities – like those coastal communities in my district – address their unique recycling and waste challenges?

RESPONSE: While EPA has limited authorities to regulate non-hazardous waste, EPA does leverage non-regulatory authorities under the Resource Conservation and Recovery Act (RCRA) to help communities address recycling challenges. As such, EPA's Sustainable Materials Management program provides information, technical assistance, tools, and resources to aide state, local, and tribal governments; businesses; schools; and other organizations in developing, implementing, and/or enhancing their materials management programs. Information about the Sustainable Materials Management program is publicly available on the Agency's website (https://www.epa.gov/smm).

In April 2020, EPA awarded $2 million to support the Great Lakes Trash Free Waters Grant Program. EPA's Trash Free Waters Program is a voluntary program that works in partnership with Federal, state, and private stakeholders, including by grant support, to reduce and prevent trash from entering U.S. waters and the ocean. The additional funds will continue efforts to provide healthy habitat for fish and wildlife by keeping trash out of the Great Lakes. Key partnership activities include identifying collective actions in communities, creating tools to aid prevention actions, supporting research efforts, and

supporting innovative approaches for packaging technology, litter prevention, and material reuse. Additional information on the EPA's Trash Free Waters program is publicly available on the Agency's website (https://www.epa.gov/trash-free-waters).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2019

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman DeFazio:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated July 29, 2019, to Administrator Andrew Wheeler, in which you sought information about the current rulemaking addressing the management and treatment of peak flows at publicly owned treatment works (POTWs) serving separate sanitary sewer systems.

In April 2018, the Agency announced a new rulemaking effort aimed at clarifying issues associated with the management and treatment of peak flows during wet weather events at POTWs with separate sanitary sewer systems. In this rulemaking, the EPA will be considering changes to the National Pollutant Discharge Elimination System (NPDES) regulations to establish a permitting framework for evaluating management options to provide POTWs serving separate sanitary sewer systems flexibility in how they manage and treat peak flows. The EPA has not yet issued a proposal, but any proposed changes would seek to provide a consistent national approach to permitting peak flows that ensures all applicable permit discharge limitations and requirements are met during peak flow events. At the same time, such an approach should allow for both efficient treatment plant operation and protection of the public from potential adverse health effects of inadequately treated wastewater.

The Agency recognizes the significant expertise that exists among states, tribes, POTWs and municipal officials, private sector engineering firms, public health agencies, and the public related to these issues. The EPA has undertaken an extensive stakeholder engagement effort to encourage individual input for developing a draft rule that will support a consistent approach to permitting, allow for innovative flexibility, and protect human health and the environment.

In advance of issuing any proposed changes, the EPA solicited public comment from August 31, 2018 to October 31, 2018 and held public listening sessions on October 16, October 24, and October 30, 2018. The EPA will continue to consider all these perspectives when developing a proposed rule to address permitting requirements for the management of peak flows at POTWs with separate sanitary sewer systems. Enclosed is a spreadsheet listing the organizations and

stakeholders with whom EPA staff have discussed this rulemaking effort. The EPA expects to release a notice of proposed rulemaking and request for public comment by November 2019 and to take final action on the proposal by July 2020. The docket, accompanying the proposed rulemaking, will contain the information underpinning the Agency's proposed action and will be available for viewing on regulations.gov.

The EPA does not possess data on the total number of facilities that blend or use side-stream treatment, frequency of blending, or volume of blended effluent discharged for the national universe of POTWs. The EPA has limited data on the cost and treatment effectiveness for any installed side-stream technologies as well as pathogen levels in blended wastewater discharges to compare to discharges of wastewater that has received full biological treatment.

Regarding the number of POTWs whose NPDES permits include acute (short-term) limits on pathogens, the EPA used final effluent Discharge Monitoring Report (DMR) data to identify limits for pathogens and pathogen indicators in 6,597 NPDES permits for POTWs serving separate sanitary sewer systems. DMRs do not identify effluent limits as short- or long-term or acute or chronic. Rather, the limits are categorized based on whether they represent a maximum (e.g., daily maximum, instantaneous maximum) or average (e.g., weekly average, annual average, monthly average) condition. The EPA found that 3,492 permits contained year-round maximum limits and 5,380 contained year-round average limits; 431 permits contained seasonal maximum limits and 560 contained seasonal average limits.

The EPA analyzed the POTWs serving separate sanitary sewer systems that discharge into a coastal recreation water or discharge up to 5 miles upstream of a coastal recreation water (as defined in Section 502 of the Clean Water Act) that had a beach advisory or closing at least once in 2018. There were 51 POTWs that discharge into or up to 5 miles upstream of a coastal recreation water that had a beach advisory or closing at 56 beaches at least once in 2018. The EPA analyzed the number and location of POTWs serving separate sanitary sewer systems located in low-income or minority communities with one or more effluent exceedances in 2018 of at least one existing NPDES permit limit. Of the 4,082 POTWs that exceed one or more permit limits in 2018, 945 were located in either low-income or minority communities.

The Committee's request is related to an ongoing regulatory action. Given its current status, we are particularly concerned about protecting the integrity of ongoing Agency pre-decisional deliberations. Some of the documents you seek may well reflect internal advice, recommendations, and analysis by Agency staff and attorneys about the proposed rule. These internal and pre-decisional deliberations are likely to be the subject of additional discussions and analysis among Agency staff and senior policymakers during development of this proposal and subsequent finalization of any regulatory action. It is critical for Agency policymakers to obtain the broadest range of advice and recommendations from Agency staff in order to properly fill its statutory obligations under the Clean Water Act and other environmental statutes. Disclosure of pre-decisional information at this stage of the deliberations could raise questions about whether the Agency's decisions are being made or influenced by proceedings in a legislative or public forum rather than through the established administrative process, which is ongoing. In addition, disclosure of such information could compromise the ability of Agency employees to provide candid advice and recommendations during the Agency's ongoing deliberative process and may

make the rulemaking process, as a whole, less robust, potentially impacting the Agency's mission.

The EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests. If you have further questions, you may contact me, or your staff may contact Duncan Braid in the EPA's Office of Congressional and Intergovernmental Relations at Braid.Duncan@epa.gov or (202) 564-7067.

Sincerely,

Joseph A. Brazauskas
Acting Associate Administrator

Enclosure

cc: The Honorable Sam Graves, Ranking Member

House Committee on Transportation & Infrastructure
Subcommittee on Water Resources and Environment
"The Administration's Priorities and Policy Initiatives Under the Clean Water Act"
September 18, 2019

Questions for the Record to Assistant Administrator David P. Ross

Questions from Chairman DeFazio

Waters of the United States

1. The agencies recently finalized their repeal of the 2015 Clean Water Rule and have proposed a far weaker replacement rule but have not analyzed hundreds of jurisdictional determinations made using the 2015 Rule to see how it worked in practice. Why did the current administration ignore the best evidence of how the 2015 Rule functions?

Response: In developing the final *Navigable Waters Protection Rule*,[1] EPA and the Department of the Army evaluated potential impacts of the rule to categories of waters, Clean Water Act (CWA) programs, and regulated entities. Due to significant data limitations that are discussed in both the Economic Analysis and the Resource and Programmatic Assessment for the final rule, the agencies' analyses are largely qualitative**.** These documents are publicly available on EPA's website (https://www.epa.gov/wotus-rule/navigable-waters-protection-rule-step-two-revise).

As for analyzing the approved jurisdictional determinations (AJDs) that were made under the 2015 Rule, EPA notes there was a relatively small number of AJDs made under the 2015 Rule before it was stayed by the courts nationwide in October 2015. Since the nationwide stay was lifted in early 2018, less than half of the country was subject to the 2015 Rule. The 2015 Rule was never implemented in 13 states and has now been declared to have exceeded the agencies' authority under the CWA,[2] so the available data are not national in scope.

2. What is your best estimate of the length of streams and the acreage of ponds and wetlands that your proposed rule will exclude from the protections of the Clean Water Act?

Response: Although EPA publishes information on its website (https://watersgeo.epa.gov/cwa/CWA-JDs/) concerning locations where EPA or the U.S. Army Corps of Engineers have determined, on a case-by-case basis, whether particular waters are or are not "waters of the United States," the agencies are not aware of any datasets or maps that fully depict the jurisdictional extent of all waters under the 2015 Rule, pre-2015 practice, or the scope of CWA jurisdiction at any point in the history of this complex regulatory program.

Due to existing data and mapping limitations, it is not possible to accurately determine the full scope of waters that are "in" or "out" under any "waters of the United States" definition. When the *Navigable*

[1] The final Navigable Waters Protection Rule to define "Waters of the United States" was published in the *Federal Register* on April 21, 2020.
[2] *See Georgia v. Wheeler*, No. 2:15-cv-079, 2019 WL 3949922 (S.D. Ga. Aug. 21, 2019), and *Texas v. EPA*, 389 F. Supp. 3d 497 (S.D. Tex. 2019).

Waters Protection Rule was proposed, some claimed that 51 percent of the nation's wetlands and more than 18 percent of the nation's streams would lose CWA protection. It is unclear whether those claims were using, as a baseline, the expansive 2015 Rule that has now been found to exceed the federal government's statutory authority, or whether the claims misinterpret the scope of CWA jurisdiction under pre-2015 Rule practice. In any event, these estimates are highly unreliable and are based on stream and wetland datasets that were not created for regulatory purposes and which have significant limitations. Purported statistics of jurisdictional changes are unreliable and inherently inaccurate, in part because:

- there are currently no comprehensive datasets through which the agencies can depict the universe of "waters of the United States;" and
- the datasets used to generate the claims cited above—the U.S. Geological Survey (USGS) National Hydrography Dataset (NHD) and the U.S. Fish and Wildlife Service (FWS) National Wetlands Inventory (NWI)—were not developed for regulatory purposes and have significant technical limitations that prevent the agencies from using them to identify CWA jurisdiction, regardless of the regulatory definition of "waters of the United States."

While the NHD and NWI are the most comprehensive hydrogeographic datasets mapping waters and wetlands in the United States and are useful resources for a variety of federal programs, including CWA programs, they cannot be used as standalone tools to determine the scope of CWA jurisdiction on a national level. Importantly, the *Navigable Waters Protection Rule* covers tributaries with intermittent flow and excludes other features with only ephemeral flow, but the NHD—even at high resolution—cannot differentiate between intermittent or ephemeral flow in most parts of the country. Further, the NWI uses a different definition of "wetlands" than the agencies' regulatory definition of "wetlands." The NWI also does not contain information sufficient to evaluate whether those mapped wetlands meet the definition of "adjacent wetlands" under previous regulations or under the final rule. For example, the NWI does not identify whether a wetland is inundated by the nearest jurisdictional water.

The NHD has other limitations that prevent its use for accurately mapping the scope of jurisdictional waters under the CWA, including:

- errors of omission (*e.g.*, failure to map streams that exist on the ground);
- errors of commission (*e.g.*, mapping streams that do not exist on the ground);
- horizontal positional inaccuracies;
- misclassification of stream flow permanence, particularly in headwaters; and
- inconsistent mapping in different parts of the country.

The NWI also has additional limitations, including:

- errors of omission (*e.g.*, failure to map wetlands that exist on the ground);
- errors of commission (*e.g.*, mapping wetlands that do not exist on the ground); and
- potentially inaccurate wetland boundary identification.

While early in the regulatory process the agencies attempted to use the NHD and NWI to assess the potential change in CWA jurisdiction as a result of the proposed rule, the agencies ultimately concluded that the limitations of these datasets preclude their use for quantifying the extent of waters whose jurisdictional status could change under the proposal. Due to these limitations, which were confirmed during the public comment period for the proposed rule and through an extensive evaluation by the

agencies, the agencies did not use the NHD or NWI to assess potential changes in jurisdiction as a result of the final rule.

It has been the consistent position of the agencies that the NHD and the NWI do not represent the scope of waters subject to CWA jurisdiction. Of note, the agencies did not use these maps to estimate changes in jurisdiction when the 2003 *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Eng'rs (SWANCC)* Guidance was issued, when the 2008 *Rapanos* Guidance was issued, or when the 2015 Rule was promulgated. As the agencies promulgated the 2015 Rule, EPA stated at the time that they "do not have maps depicting waters of the United States under either present regulatory standards or those in the final [2015] rule."[3] This remains true today – the agencies do not have maps of "waters of the United States" under the 2015 Rule, under the 2019 Rule, or under the *Navigable Waters Protection Rule*.

In 2015, former EPA Administrator Gina McCarthy testified before Congress[4] about the NHD and the NWI. According to Administrator McCarthy's testimony, those datasets:

- were "not used to determine jurisdiction and not intended to be used for jurisdiction";
- "are not relevant to the jurisdiction of the 'waters of the U.S.'";
- "are not consistent with how we look at the jurisdiction of the Clean Water Act"; and
- have "nothing to do, as far as I know, with any decision concerning jurisdiction of the Clean Water Act."

Under the previous administration, EPA Office of Water Acting Assistant Administrator Nancy Stoner wrote to the House Committee on Science, Space, and Technology that "no national or statewide maps have been prepared by any agency, including EPA, showing the scope of waters subject to the Clean Water Act…. To develop maps of jurisdictional waters requires site-specific knowledge of the physical features of water bodies, and *these data are not available*[.]"[5] Former EPA Office of Water Deputy Assistant Administrator Ken Kopocis wrote a similar letter to the House Science Committee, stating: "These [USGS] maps were not prepared for the purpose of, nor do they represent, a depiction of the scope of waters protected under the Clean Water Act."[6] And in 2014, an EPA blog post entitled *Mapping the Truth* stated, "While these [USGS and FWS] maps are useful tools for water resource managers, they cannot be used to determine Clean Water Act jurisdiction – now or *ever*."[7]

Thus, the agencies are not able to estimate the length of streams or the acreage of ponds and wetlands that would not be jurisdictional under the proposed rule or the final rule. In the *Resource and Programmatic Assessment for the Navigable Waters Protection Rule: Definition of "Waters of the*

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[3] *See Response to Comments for the Clean Water Rule, Clean Water Rule* Comment Compendium Topic 8: Tributaries, Docket ID. No. EPA-HQ-OW-2011-0880-20872, p. 442, https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20872.

[4] Impact of the Proposed "Waters of the United States" Rule on State and Local Governments: Hearing Before the H. Comm. on Transp. & Infrastructure and the S. Comm. on Env't & Pub. Works, 114th Cong. (2015) (testimony of Gina McCarthy, Adm'r, EPA).

[5] Letter from Nancy Stoner, Acting Assistant Adm'r, EPA Office of Water, to Hon. Lamar Smith, Chairman, Comm. on Science, Space, and Tech., U.S. House of Representatives (July 28, 2014) (emphasis added).

[6] Letter from Kenneth J. Kopocis, Deputy Assistant Adm'r, EPA Office of Water, to Hon. Lamar Smith, Chairman, Comm. on Science, Space, and Tech., U.S. House of Representatives (Jan. 8, 2015).

[7] U.S. EPA, *Mapping the Truth*, THE EPA BLOG (Aug. 28, 2014), https://blog.epa.gov/2014/08/28/mapping-the-truth/ (emphasis added).

United States," the agencies provided their best attempt to describe the potential effect of the final rule on specific categories of aquatic resources.

a. If you cannot provide an estimate, do you have any idea how many people's sources of drinking water supplies will be adversely affected?

Response: One may not assume sources of drinking water will be adversely affected by the agencies' revised definition. If a source water is not a "water of the United States," states, tribes, and local governments may have programs and policies in place to protect that source water, and even if those are absent, activities that might result in water quality degradation will not occur on all streams and wetlands. To explore the relationship between "waters of the United States" and sources of drinking water, the agencies attempted to evaluate the spatial distribution of drinking water sources in relation to streamflow classification (*e.g.*, perennial, intermittent, ephemeral) type by overlaying the source protection areas (SPAs) for surface water intakes on the NHD at high resolution. Due to data limitations of the NHD – in particular, the fact that the NHD does not identify intermittent and ephemeral streams as separate categories in many parts of the country – coupled with uncertainty regarding the jurisdictional status of many intermittent streams and all ephemeral streams subject to a case-specific significant nexus analysis under pre-2015 practice, the agencies concluded that the exploratory analysis cannot appropriately or accurately assess the potential effects of the final rule on public water systems. In addition, the agencies note that the mere presence of ephemeral streams in a SPA does not mean there will be water quality degradation following the change in the definition of "waters of the United States," as mentioned above.

b. Can you provide an estimate for the amount of increased property damage due to flooding made worse by wetlands loss?

Response: Due to existing data limitations described above, the agencies are unable to make such estimates.

c. If the EPA is ignorant to the real-world public health and safety impacts of its proposal, how does the agency expect people to meaningfully participate in the rulemaking and how can EPA defend it as good policy?

Response: As part of the rulemaking process, the agencies invited written pre-proposal recommendations and established an administrative docket to accept recommendations from all interested parties. The agencies received approximately 6,300 letters pre-proposal. The agencies considered the input received from a wide range of stakeholders as they developed the proposal to revise the definition of "waters of the United States," including input received from states, tribes, and local governments during the federalism and tribal consultation periods. The agencies also provided opportunities for the public, states, and tribes to participate in the rulemaking process during the public comment period, via a public hearing, and state and tribal forums held in four locations across the country. The agencies solicited comment throughout the proposed rule's development on all aspects of the proposal. The agencies listened to those directly affected by the regulations. The public was given ample opportunity to participate in the rulemaking process, and the agencies considered the comments received in finalizing the rule.

The agencies also note that the final rule is primarily guided by the statutory authority delegated by Congress under the CWA and the legal precedent set by key Supreme Court cases. The Supreme Court

has twice ruled that the agencies misinterpreted the scope of their CWA authority, and the agencies' 2015 Rule was found by a federal court to have exceeded their statutory authority. The agencies' *Navigable Waters Protection Rule* is designed to protect public health and the environment while respecting the statutory authority that Congress delegated to them. The agencies are precluded from exceeding their delegated authorities to achieve specific policy, scientific, or other outcomes.

3. Since your replacement proposal is based on Justice Scalia's opinion in the *Rapanos* case, how will EPA implement the Act in those places where federal courts have ruled that Justice Kennedy's more protective approach is controlling?

Response: On February 28, 2017, the President issued Executive Order 13778 entitled *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule*. Section 1 of the Executive Order states, "[i]t is in the national interest to ensure the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution." The Executive Order directed EPA and the Army to review the 2015 Rule for consistency with the policy outlined in Section 1 of the Executive Order and to issue a proposed rule rescinding or revising the 2015 Rule as appropriate and consistent with law (Section 2). The Executive Order also directed the agencies to "consider interpreting the term 'navigable waters' . . . in a manner consistent with" Justice Scalia's plurality opinion in *Rapanos* v. *United States*, 547 U.S. 715 (2006) (Section 3). As explained in the preamble to the final rule, the agencies established a regulation that defines "waters of the United States" to reflect the ordinary meaning of the statutory term, as well as to adhere to Constitutional and statutory limitations, the objective and policies of the CWA, and case law, including the guiding principles that the Supreme Court has articulated in *Riverside Bayview Homes*, 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Eng'rs (SWANCC*), 531 U.S. 159 (2001); and *Rapanos* for interpreting the reach of the CWA.

While the agencies acknowledge that the plurality and Justice Kennedy viewed the question of federal CWA jurisdiction differently in *Rapanos*, the agencies find that there are sufficient commonalities between these opinions. These similarities helped instruct the agencies on where to draw the line between Federal and State waters in the final rule.

In the final rule, the agencies note that since the *Rapanos* decision, the Federal government has adopted a broad interpretation of Justice Kennedy's concurring opinion, arguing that his "significant nexus" test provides an independent basis for establishing jurisdiction over certain "waters of the United States." And rather than limiting the application of Justice Kennedy's opinion to the specific facts and wetlands at issue in that case, similar to their treatment of the *SWANCC* decision, the agencies previously have applied Justice Kennedy's reasoning more broadly to include, for example, the application of the significant nexus test to determining jurisdiction over tributaries, not just wetlands. Many courts have deferred to this position, and some courts rely exclusively on Justice Kennedy's significant nexus test while other courts have held that jurisdiction can be established under either the plurality or concurring opinions. The agencies' final rule, as explained in Section III of the preamble, is informed in several key aspects by Justice Kennedy's opinion, but the agencies now appropriately recognize some of the limiting principles articulated within his concurring opinion, as well as the principles articulated in Justice Scalia's plurality opinion in *Rapanos*, the *SWANCC* majority opinion, and the unanimous decision in *Riverside Bayview*.

4. The replacement rule would surrender federal safeguards for millions of miles of streams and tens of millions of acres of wetlands, many of which are critical to endangered species. Have you initiated consultation under the Endangered Species Act with the U.S. Fish and Wildlife Service and National Marine Fisheries Service and, if so, what input have you received?

Response: The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) were part of the interagency review process for the final rule under Executive Order 12866. The agencies have not initiated consultation under the Endangered Species Act (ESA) with the FWS and NMFS and need not have done so, given applicable legal requirements. The agencies address the requirements of the ESA in the *Resource and Programmatic Assessment for the Navigable Waters Protection Rule: Definition of "Waters of the United States."*

Regarding any estimates of the change in jurisdiction as a result of the *Navigable Waters Protection Rule*, see the response to Question 2 above.

5. Your proposal assumes that several states will step up to protect some or all of the water bodies that you intend to exclude from the law's safeguards.

a. Did you do any analysis of the present administrative, financial, and political landscape in those states and the processes which these states would need to navigate to adopt stricter-than-federal requirements?

Response: The agencies collected information from several sources to characterize states' ability to regulate waters beyond the jurisdictional scope of the CWA. The agencies' assessment is presented in the supporting documents to the final rule, which are publicly available on EPA's website (https://www.epa.gov/nwpr/navigable-waters-protection-rule-supporting-documents).

b. For instance, your economic document predicts that Indiana will fill in these gaps - what is Indiana's present willingness and capacity to extend the full suite of Clean Water Act protections to all wetlands and streams not covered by the proposed rule?

Response: The commissioned literature review supporting the *Navigable Waters Protection Rule*, which is available in the docket, identified the variables most commonly used in the federalism literature that were useful in anticipating how states could respond to the *Navigable Waters Protection Rule*. The agencies relied on a subset of these variables that were available to them and had the strongest bearing on the way states may respond in order to conduct their analysis of potential state responses to the final rule.

The agencies' analysis of potential state responses in the *Economic Analysis for the Navigable Waters Protection Rule: Definition of "Waters of the United States"* lists Indiana in the highest response category, which means the available data and information indicate Indiana is likely to continue regulating beyond the scope of the CWA, as Indiana does now, according to the agencies' research. The agencies cannot predict conclusively how states will act in the future, including whether Indiana will choose to extend its existing protections in the future.

c. How many states currently have programs established to prevent discharges of pollutants or dredged and fill materials to non-Waters of the US?

Response: The agencies have identified twenty-five states that have chosen to regulate waters of the state that are not subject to federal regulation under the CWA. This information is based on the agencies' extensive research into how states regulate their aquatic resources. However, the agencies do not have sufficient information at this time to conclude that only those twenty-five states regulate some waters that are not "waters of the United States," and recognize that other states may regulate such waters based on state program implementation practices that the agencies were unable to include in their analysis of state programs.

6. You said several times during the hearing that you are not proposing to eliminate Clean Water Act protections for intermittent streams.

a. Your proposal explicitly took comment on excluding all but perennial streams. Is that idea now completely off the table?

Response: The revised definition of "waters of the United States" in the final *Navigable Waters Protection Rule* includes both intermittent and perennial tributaries of traditional navigable waters as "waters of the United States." The agencies solicited comment on all aspects of the proposed rule, including which tributaries of traditional navigable waters should be regulated as "waters of the United States." An explanation of the categories of waters that are and are not jurisdictional under the final rule is publicly available on EPA's website (https://www.epa.gov/nwpr).

b. Please explain how your proposed definition of "intermittent" ensures that all waters which hydrologists would categorize as intermittent will be protected.

Response: Though "intermittent" is a commonly used scientific term, the agencies proposed and subsequently finalized a definition of this term for purposes of CWA jurisdiction to ensure that the regulation is clear. Under the final rule, the term "intermittent" means "surface water flowing continuously during certain times of the year and more than in direct response to precipitation (*e.g.*, seasonally when the groundwater table is elevated or when snowpack melts)."

Some public comments that the agencies received on the proposed rule requested that the final rule require that groundwater contributions be the source for perennial and intermittent flow in "tributaries" as defined in the rule. The agencies recognize that groundwater input is an element of most scientific definitions of perennial and intermittent flow, but decided not to mandate groundwater input as the controlling element of the definition of "perennial" or "intermittent" in the final rule. As a threshold matter, the agencies believe that such an approach would too narrowly limit CWA jurisdiction over waters that provide continuous or intermittent and predictable flow to traditional navigable waters in a typical year. For example, many headwater streams in mountainous regions flow through channels incised in bedrock with no groundwater interface with the bed of the stream. These streams instead are fed by glacial or high elevation snowpack melt. The same scenario may also exist in northern climates, where spring flows could be fed almost exclusively through melting snowpack absent elevated groundwater tables.

As noted in the final rule preamble, continuous surface flow during certain times of the year may occur seasonally, such as in the spring when evapotranspiration is low and the groundwater table is elevated. Under these conditions, the groundwater table intersects the channel bed and groundwater provides continuous baseflow for weeks or months at a time, even when it is not raining or has not very recently rained. Melting snowpack, as noted above, however, can be the sole or primary source of continuous surface flow in tributaries during certain times of the year. The agencies recognize that intermittent flow

in certain mountain streams, for example, may result primarily from melting snowpack, not groundwater contributions to the channel. The agencies did not propose or finalize a specific duration (*e.g.*, the number of days, weeks, or months) of surface flow that constitutes intermittent flow under the final rule because the time period that encompasses intermittent flow can vary widely across the country based upon climate, hydrology, topography, soils, and other conditions. The agencies believe that the definition of "intermittent" is consistent with the scientific meaning of the term but is likely broader than most scientific definitions because of the inclusion of flow generated from melting snowpack.

7. Considering the two letters raising alleged concerns about the impact that disclosing documents would have on EPA's deliberative process:

a. Are there documents responsive to the Committee's requests that you have withheld?
b. Are any of those documents withheld based on their supposed deliberative nature?
c. What privilege are you asserting?
d. Is that the sole privilege being asserted?
e. What is the basis for assertion of that privilege to withhold documents from the Committee?

At the time, the Committee's requests were related to ongoing regulatory actions. Given that status, the Agency was particularly concerned about protecting the integrity of ongoing Agency pre-decisional deliberations. Some of the documents you sought may well reflect internal advice, recommendations, and analysis by Agency staff and attorneys about the proposed rules. These internal and pre-decisional deliberations are likely to be the subject of additional discussions and analysis among Agency staff and senior policymakers during development of these proposals and the subsequent finalization of any regulatory action. It is critical for Agency policymakers to obtain a broad range of advice and recommendations from their staff in order to properly execute statutory obligations under the CWA and other environmental statutes.

For ongoing rulemakings, disclosure of pre-decisional information at this stage of the deliberations could raise questions about whether the Agency's decisions are being made or influenced by proceedings in a legislative or public forum rather than through the established administrative process. In addition, disclosure of such information could compromise the ability of Agency employees to provide candid advice and recommendations during the Agency's ongoing deliberative process and may have a chilling effect upon future Executive Branch deliberations, making the rulemaking process, as a whole, less robust, potentially impacting the Agency's mission.

As for completed rulemaking, the EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests.

Groundwater Connection

1. The Clean Water Act requires a permit for "Any addition of any pollutant to navigable waters from any point source." That language does not include an exemption for discharges via groundwater, does it? Is there another provision of the Clean Water Act that expressly exempts discharges via groundwater from permitting?

Response:

On April 23, 2020, the Supreme Court issued an opinion in *County of Maui v. Hawai'i Wildlife Fund*, No. 18-260, addressing the question of whether a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit is required for releases of pollutants from a point source that passes through groundwater before reaching a navigable water. In a 6-3 decision, the Court held that an NPDES permit is required "when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge." Slip Op. at 15. In describing the new "functional equivalent" standard, the Court stated that "an addition [of a pollutant] falls within the statutory requirement that it be 'from any point source' when a point source directly deposits pollutants into navigable waters, or when the discharge reaches the same result through roughly similar means." Slip Op. at 15. The Court listed seven factors that "may prove relevant (depending upon the circumstances of a particular case)" in determining if an NPDES permit is required. Slip Op. at 16.

EPA is reviewing the Court's decision and considering how best to address the Court's call for the Agency to provide further guidance, including using the tools available to the Agency such as guidance and rulemaking, to provide additional clarity, and less risk of future litigation, for states and tribes, regulated entities, and the public.

Sewage "Blending"

The EPA has recently announced that it is considering whether to authorize wastewater treatment plants to discharge partially treated or "blended" sewage during wet weather events.

a. What information does EPA have about how many publicly owned treatment works currently engage in blending and how much partially-treated wastewater they are discharging into waterways?

b. How many of these treatment works are located in or near low-income communities or communities of color?

c. What scientific evidence does the agency have to support that discharging blended sewage is safe for public health and the environment, particularly give[n] the high level of pathogens in blended sewage?

d. How many waste water treatment plants are subject to short-term (acute) limits on pathogen discharges in their NPDES permits to protect the public from exposure to pathogens?

e. What information does the agency have about the effectiveness of alternative or "side-stream" technologies that treatment plants have proposed using in lieu of traditional treatment methods?

Response: EPA's September 16, 2019 response (enclosed) to the Chairman's July 29, 2019 letter to the Agency addresses these questions. As stated in EPA's September 16, 2019 letter, the Agency's rulemaking will be considering changes to the National Pollutant Discharge Elimination System (NPDES) regulations to establish a permitting framework for evaluating management options to provide publicly owned treatment works (POTWs) serving separate sanitary sewer systems flexibility in how they manage and treat peak flows. Any proposed changes would seek to provide a consistent national approach to permitting peak flows that ensures that all applicable permit discharge limitations and

requirements are met during peak flow events. Once the proposal is published in the *Federal Register*, there will be a public docket containing the information underpinning the Agency's proposed action available for viewing on regulations.gov.

PFAS

1. **Mr. Ross, you have testified that PFAS pollution in drinking water supplies poses an urgent threat to public health.**
    a. **If so, why has EPA failed to use EPA's authority under Sec. 1412(D) [sic] of the Safe Drinking Water Act?**
    b. **As you know, Sec 1412(D) [sic] permits the EPA to promulgate an interim national primary water drinking regulation to address an urgent threat to public health regardless of whether the agency has completed a cost-benefit analysis.**

Response: EPA is committed to following the drinking water standard setting process outlined in the Safe Drinking Water Act (SDWA). This process is designed to ensure public participation, transparency, and the use of the best-available peer reviewed science and technical information. On February 20, 2020, EPA took another important step in implementing the Agency's PFAS Action Plan by proposing regulatory determinations for PFOS and PFOA in drinking water. The proposed regulatory determination was published in the *Federal Register* on March 10, 2020. In that proposal, EPA is asking for information and data on other PFAS substances, as well as seeking comment on potential monitoring requirements and regulatory approaches that EPA is considering for PFAS chemicals. After the public comment period closes, EPA will evaluate all comments received, and then finalizing a regulatory determination will be the next step in the regulatory process.

Setting an "interim" National Primary Drinking Water Regulation (NPDWR) under SDWA section 1412(b)(1)(D) would still require the Agency to go through full notice-and-comment rulemaking and to build an administrative record to justify the interim NPDWR. To develop a robust and legally defensible administrative record for a NPDWR, the Agency uses the Health Risk Reduction and Cost Analysis (HRRCA). This tool requires significant data, information and analysis inputs, and much of that information would also need to be developed for an interim NPDWR and included in any rulemaking record. Moreover, the SDWA requires EPA to produce a full HRRCA within 3 years of promulgating an interim NPDWR. Developing a full HRRCA after the fact could mean that the final analysis may or may not support the requirements of the interim regulation, leading to potential revision or withdrawal of the interim NPDWR. As such, this process could result in inefficient use of local, state, and federal resources, diversion of infrastructure replacement funds, increased water bills, and erosion of public trust.

Pursuant to section 1431(a) of the SDWA, EPA also has authority to take necessary action to protect public health from imminent and substantial endangerment to drinking water when state and local action has been insufficient. Among other things, this authority enables EPA to respond to contamination that threatens specific public drinking water supplies. EPA has used its authority under section 1431 to issue orders that require persons who have caused or contributed to PFAS contamination to take actions as may be necessary to protect the health of affected persons, including actions that reduce or prevent exposures. For PFAS chemicals, EPA believes that section 1431(a) provides a more immediate and impactful use of SDWA's emergency powers for communities with known or threatened contamination.

Clean Water Act Section 401

1. EPA has said that its 401-rulemaking effort represents the first holistic review of section 401 of the CWA. Given that the agency produced guidance on 401 in 1989 and a handbook in 2010, don't these documents represent EPA's agency interpretation of the 401 regulations? What is the bar for "analysis?" Where are the elements of analysis defined or listed? What legal precedent is there for throwing out decades of agency documents and case law based on "lack of analysis?"

Response: The Agency's existing water quality certification regulations pre-date the Clean Water Act (CWA) and do not reflect the actual language of section 401. As explained in the preamble for the proposed rulemaking to update EPA's water quality certification rule, although the 1989 guidance and the now-rescinded 2010 handbook included a number of recommendations on scope, timing, and other issues related to the water quality certification process, these recommendations were not supported with robust analysis or interpretation of the CWA. Indeed, the 2010 handbook was primarily a compilation of programs adopted by states. EPA's section 401 rulemaking marks the first time the Agency has undertaken a holistic review of the text of section 401 and the case law that has developed since the 1972 CWA amendments. This is also the first time the Agency has subjected its analysis to public notice and comment.

2. Congress signaled that certifying authorities have expertise and ability to evaluate potential water quality impacts, which EPA acknowledges in the proposed rule. That being the case, why does EPA propose to limit the information that a state can request as part of that certification process, restrict certifying authorities' ability to condition permits to meet their state resources needs, and limit the time in which they can make their expert decisions?

Response: The proposal does not limit the ability of states to request information as part of the water quality certification process. Further, the proposal's timeline to act on a certification request simply aligns the proposed regulatory language with the plain language of the statute, which requires states to act on a request for certification "within the reasonable period of time (not to exceed one year)." The proposal includes a scope of certification that is consistent with the CWA and that appropriately focuses water quality certifications and any related conditions on water quality. The EPA has made enhancements in the final rule to provide additional clarity and regulatory certainty.

3. Regarding the scope of certification, section 401 identifies "any effluent limitations and other limitations," (under specifically identifies [*sic*] CWA regulatory programs) and "any other appropriate requirements under state law" as subject to certification and condition decisions. Given that Congress specifically identifies CWA Provisions that should be considered for certification and conditions and added "any other appropriate requirements under state law" one would reasonably assume that this addition extends the scope of 401 beyond the already enumerated CWA provisions.

a. Since it is the EPA's position that Congress chose its words intentionally, can the EPA explain how it is appropriate to limit the phrase "any other appropriate requirement of state law" to EPA-approved CWA programs?

Response: Section 401 contains several important undefined terms that, individually and collectively, can be interpreted in varying ways to determine the scope of a certifying authority's review and

authority, including the term "any other appropriate requirement of state law." The EPA has made enhancements in the final rule to provide additional clarity and regulatory certainty. The Agency's rationale for the final rule is laid out in the preamble.

b. Why did EPA decide to limit state conditions to state statutes as opposed to administrative best management practices, which provide more flexibility and place less administrative burden on states?

Response: Given the text, structure, purpose, and legislative history of the CWA and section 401, EPA proposed to interpret ''appropriate requirement of state law'' for section 401 certification review in a proposed definition of "water quality requirements," which includes those provisions of state or tribal law that are EPA-approved CWA regulatory programs. The Agency's rationale for this interpretation is laid out in the preamble of the proposed rule (see 84 Fed. Reg. 44080). The EPA has made enhancements in the final rule to provide additional clarity and regulatory certainty.

c. When the administration finalizes its "Waters of the US" rule, would the 401 rulemaking mean that states could not protect their "non- Waters of the US" from adverse effects of federal permits?

Response: Section 401 applies to potential discharges from federally-licensed or permitted projects into waters of the United States. The proposed section 401 rulemaking does not restrict a state's ability to protect non-waters of the United States within their borders through state authorities.

Yazoo Pumps

1. On April 3, 2019, EPA Administrator Andrew Wheeler confirmed to a Senate Appropriations subcommittee hearing that his agency is now reconsidering a 2008 decision on the Yazoo dam pumps.

a. **What are the justifications for this reconsideration?**
b. **What is the status of this EPA action?**

Response: Following the significant flooding along the lower Mississippi River and the Yazoo backwater area, EPA and the U.S. Army Corps of Engineers (Corps) have been discussing options to reduce the flood risks in the Yazoo backwater area while protecting wetlands.

The Corps has provided additional data and analyses to EPA, and has explained how it developed this information. At this time, we are discussing what impact the new information might have on options for the Yazoo backwater area, in terms of what an appropriate method might be to reduce flood risks while protecting wetlands.

Pebble Mine Decision

1. Does the EPA continue to support the science and findings of adverse ecological impacts described in the 2014 Proposed Determination for the Pebble Deposit Area, Southwest Alaska?

Response: I have no comment on this matter as I am recused from any decisions related to the Pebble Mine.

2. If not, what new information has arisen to change this determination and reconsider the project in its entirety?

Response: I have no comment on this matter as I am recused from any decisions related to the Pebble Mine.

Questions from Congresswoman Fletcher

1. During the hearing, I asked you about EPA's role in the prevention of spills of hazardous substances under the Clean Water Act. As you know, Section 311(j)(1)(C) directs the President to issue regulations establishing procedures, methods, and equipment; and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges. The President has delegated the authority to regulate non-transportation-related onshore facilities landward of the coastline, under section 311(j)(1)(C) to EPA.

In February 2016, the EPA agreed, as part of a court-ordered settlement, to propose hazardous substance spill-prevention rules for industrial sites by June of 2018, and to issue a final rule in 2019. After soliciting input about hazardous substance spills across the country, the EPA issued a proposed rule to establish no new requirements related to spills of hazardous substances under the Clean Water Act. This in contradiction to the letter of the law and Congress's directive.

The EPA's own analysis determined that 2,491 chemical releases between 2007-2016 were Clean Water Act hazardous substances that originated from non-transportation related sources. In looking at the monetized damages of the spills, EPA failed to consider "water supply contamination." Given that the 2014 spill by a chemical storage facility in West Virginia left more than 300,000 residents without drinking water for at least a week, it is surprising that EPA would fail to look at "water supply contamination" when estimating monetized damages of spills.

a) In EPA's release announcing that this administration would no longer take action to prevent contamination of drinking water sources, your former boss, Scott Pruitt, suggested that such measures would be "duplicative and unnecessary". However, according to EPA's own data, since the Charleston spill, there have been an additional 600 chemical spills into local waterways – 14 of which were severe enough to contaminate local drinking water supplies. If we have seen an additional 600 chemical spills in just a 3-year period, explain to me how additional measures to reduce or eliminate chemical spills is "unnecessary"?

Response: EPA recognizes the concerns regarding threats to drinking water systems. In the 40 years since Clean Water Act (CWA) section 311(j)(1)(C) was enacted by Congress, multiple statutory and regulatory requirements have been established under different federal authorities which serve, both directly and indirectly, to prevent and contain CWA Hazardous Substances (CWA HS) discharges.

Those statutory and regulatory requirements include:

- CWA National Pollutant Discharge Elimination System Regulations[8]
- Toxic Substances Control Act Polychlorinated Biphenyl Regulations[9]
- CWA Effluent Guidelines and Standards for various point source categories[10]
- Risk Management Program Rule[11]
- Spill Prevention, Control, and Countermeasure Rule[12]
- Pesticide Regulations[13]
- Resource Conservation and Recovery Act Regulations[14]
- Underground Storage Tank Rule[15]
- Emergency Planning and Community Right-to-Know Act Regulations[16]
- Pulp and Paper Effluent Guidelines[17]

EPA identified nine program elements[18] that are commonly contained in EPA regulatory programs provisions and that adequately serve to prevent, contain, or mitigate CWA HS. EPA's analysis indicated that these nine program elements are reflected in the framework of EPA's existing regulatory requirements identified above.

For this rulemaking, EPA analyzed CWA HS discharges reported to the National Response Center (NRC) over a 10-year period between 2007-2016, as well as voluntary survey data, to estimate the frequency, impacts, and causes of discharges to identify what spill prevention requirements are needed. For this period, EPA identified less than one percent of all reports to the NRC for that period as CWA HS discharges originating from non-transportation-related sources, with less than five percent of those discharges having reported impacts. EPA concluded that based on the reported frequency and impacts of identified CWA HS discharges, the existing regulatory framework adequately serves to prevent and contain CWA HS discharges.

EPA is unable to identify the 600 chemical spills cited in the question, and in what three-year period these spills occurred, so the Agency is unable to provide additional clarification. The question also cited

[8] CWA National Pollutant Discharge Elimination System Regulations Pretreatment Standards (40 CFR Part 403) and Multi-Sector General Permit (MSGP) for Industrial Stormwater, issued by EPA in 2015. The MSGP is a general permit that is available to facilities that do not discharge to a state with NPDES permitting authority. Because many states model their industrial stormwater permits after EPA's permit, it was used to identify prevention requirements likely to be present in NPDES industrial stormwater permits issued by states.
[9] 40 CFR 761
[10] Ore Mining and Dressing Point Source Category (40 CFR Part 440), Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), Construction and Development Point Source Category (40 CFR Part 450), Concentrated Aquatic Animal Production Point Source Category (40 CFR Part 451), and Pesticide Chemicals Point Source Category (40 CFR Part 455).
[11] 40 CFR Part 68
[12] 40 CFR Part 112
[13] Pesticide Management Regulation (40 CFR Part 165) and Pesticide Worker Protection Standard (40 CFR Part 170).
[14] RCRA Generators Regulation (40 CFR Part 262) and RCRA Treatment, Storage, and Disposal (TSD) Regulations (40 CFR Parts 264 and 265).
[15] 40 CFR Part 280
[16] EPCRA Planning Rule (40 CFR Part 355) and EPCRA Reporting Rule (40 CFR Part 370).
[17] 40 CFR Part 430
[18] The program elements identified are (1) Safety Information, (2) Hazard Review, (3) Mechanical Integrity, (4) Personnel Training, (5) Incident Investigations, (6) Compliance Audits, (7) Secondary Containment, (8) Emergency Response Plan, and (9) Coordination of the Emergency Response Program with State/Local Responders.

the January 2014 chemical spill in Charleston, WV. It is important to clarify that had EPA reached a different conclusion in this rulemaking and imposed additional requirements under CWA 311(j)(1)(c), those requirements would not apply to the Charleston, WV spill. EPA notes that, in addition to the regulatory structure already identified herein, recent statutory amendments to the Emergency Planning and Community Right-To-Know (EPCRA) focus on notifications to State drinking water primacy agencies, as well as on providing community water systems with hazardous chemical inventory data.[19]

In summary, based on a review of the existing EPA programs in conjunction with the frequency, impacts, and causes of reported CWA HS discharges, the Agency believes the existing regulatory framework meets the requirements of CWA section 311(j)(1)(C) and is serving to prevent, contain, and mitigate CWA HS discharges. Therefore, in August 2019, EPA determined to not establish new discharge prevention and containment regulatory requirements under CWA section 311.

For more information on the framework of federal programs and corresponding regulations, please see the Background Information Document: Review of Relevant Federal and State Regulations[20] and the Supplemental Background Information Document: Additional Review of Relevant EPA Federal and State Regulations in the docket (Docket ID No. EPA-HQ-OLEM-2018-0024).[21] For a review of the analyses of the frequency of spills, the causes, and the impacts, see the Regulatory Impact Analysis (RIA).[22] This information can be found in in Appendix A of the RIA for the final rule.

b) The number of releases (2,491) between 2007-2016 is likely underestimated. Even if it this is an accurate number, which EPA admits it has incomplete information, what would be the annual number of Clean Water Act hazardous substances releases before the EPA would decide to use its authority under Section 311(j)(1)(C) and develop comprehensive hazardous substance spill prevention regulations? What is an acceptable number of hazardous substance spills in your mind? Alternatively, what is an unacceptable number of spills that would push you to reverse course and pursue protective standards under the Clean Water Act?

Response: As described above, EPA believes that the identified existing EPA regulatory programs adequately serve to prevent, contain, and mitigate CWA HS discharges.

c) You mentioned existing regulations for hazardous substance spills. EPA claims that existing requirements adequately cover the nine program elements that EPA believes to be key for a discharge and accident prevention program. What percentage of facilities are subject to requirements covering all nine of those program elements for all the hazardous substances they store? If spills are continuing to occur, it would seem the existing requirements are insufficient. Why is EPA not pursuing a comprehensive scheme under the Clean Water Act?

Response: EPA used EPCRA Tier II information as the best available data to estimate the universe of potentially affected facilities by identifying those with CWA HS onsite. EPA's analysis indicates that, for all nine program elements, there are cumulative regulatory requirements for accident and discharge prevention relevant to CWA HS under the existing framework. Based on a review of the discharges and the frequency, causes, and impacts of those discharges, EPA believes that the existing framework, as

[19] For more information, see America's Water Infrastructure Act, Amendments to the Emergency Planning and Community Right-to-Know Act, A Guide for SERCs, TERCs, and LEPCs.
[20] https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0024-0113
[21] https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0024-0187
[22] https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0024-0111

implemented through existing EPA regulatory programs, adequately serves to prevent, contain, or mitigate CWA HS discharges under section 311(j)(1)(C).

It is important to note that, while the final action does not establish any new requirements, the CWA prohibits discharges of CWA HS in quantities that may be harmful, with exceptions only where otherwise permitted or under such circumstances or conditions as the President may, by regulation, determine not to be harmful, irrespective of whether facilities are subject to hazardous substance spill prevention regulations.

d) EPA cited spill prevention regulations for oil as one of the existing requirements. What is the justification for refusing to issue regulations for hazardous substances or regulations for a different hazardous substance, like oil?

Response: The CWA HS spill prevention final action is not based on any individual provision and/or program preventing CWA HS discharges, but rather on how the cumulative framework of key prevention elements, as implemented through existing EPA regulatory programs, adequately serves to prevent, contain, or mitigate CWA HS discharges under section 311(j)(1)(C).

<u>Questions from Congresswoman Johnson (TX)</u>

1. In your written testimony, you state that EPA's core mission is "protecting public health and the environment every single day." Can you explain how EPA is achieving its core mission by repealing the 2015 Clean Water Rule and narrowing the definition of "Waters of the United States" that will reduce the bodies of water protected by the Clean Water Act, some of which are relied upon by millions of Americans as their source of water supply?

Response: EPA's core mission is to protect public health and the environment by using the statutory authorities that Congress provides to the Agency. Congress recognizes that there is more to environmental protection than exclusive federal authority – the states and tribes are partners that can and do regulate their own water resources.

EPA and the Department of the Army finalized a definition of "waters of the United States" that is superior to both the 1986 and 2015 Rules. The agencies revised previous regulatory definitions of this term to distinguish between water that is a "water of the United States" subject to federal regulation under the Clean Water Act (CWA or Act) and water or land that is subject to exclusive state or tribal jurisdiction, consistent with the scope of jurisdiction authorized under the CWA and the direction in the Act to "recognize, preserve, and protect the primary responsibilities and rights of States to . . . plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . ." 33 U.S.C. 1251(b).

In developing an appropriate regulatory framework for the final rule, the agencies recognize and respect the primary responsibilities and rights of states to regulate their land and water resources as reflected in CWA section 101(b). 33 U.S.C. 1251(b); *see also id.* at 1370. The oft-quoted objective of the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," *id.* at 1251(a), must be implemented in a manner consistent with Congress' policy directives to the agencies. The Supreme Court long ago recognized the distinction between federal waters traditionally understood as navigable and waters "subject to the control of the States." *The Daniel Ball,* 77 U.S. (10 Wall.) 557,

564-65 (1870). Over a century later, the Supreme Court in *SWANCC* reaffirmed the State's "traditional and primary power over land and water use." *SWANCC*, 531 U.S. at 174; *accord Rapanos*, 547 U.S. at 738 (Scalia, J., plurality).

Ensuring that states and tribes retain authority over their land and water resources, reflecting the policy in section 101(b), helps carry out the overall objective of the CWA and ensures that the agencies are giving full effect and consideration to the entire structure and function of the Act. *See, e.g., Rapanos*, 547 U.S. at 755-56 (Scalia, J., plurality) ("[C]lean water is not the *only* purpose of the statute. So is the preservation of primary state responsibility for ordinary land-use decisions. 33 U.S.C. 1251(b).") (emphasis in original). That includes the dozens of nonregulatory grant, research, nonpoint source, groundwater, and watershed planning programs that were intended by Congress to assist the states in controlling pollution in the nation's waters, not just its navigable waters. These non-regulatory sections of the CWA reveal Congress' intent to restore and maintain the integrity of the nation's waters using federal assistance to support state, tribal, and local partnerships to control pollution of the nation's waters in addition to a federal regulatory prohibition on the discharge of pollutants to its navigable waters. *See e.g., id*. at 745 ("It is not clear that the state and local conservation efforts that the CWA explicitly calls for, see 33 U.S.C. 1251(b), are in any way inadequate for the goal of preservation."). Regulating *all* of the nation's waters using the Act's federal regulatory mechanisms would call into question the need for the more holistic planning provisions of the Act and the state partnerships they entail. Therefore, by recognizing the distinctions between the nation's waters and its navigable waters and between the overall objective and goals of the CWA and the specific policy directives from Congress, the agencies can fully implement the entire structure of the Act while respecting the specific word choices of Congress. *See, e.g., Bailey v. United States*, 516 U.S. at 146 (1995); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. at 544 (2012).

2. In your written testimony, you state that your Office is focused on restoring the rule of law. However, every action EPA has taken is to undermine the safety of clean drinking water. How can you say that your Office is restoring the rule of law when it is overturning decades of precedence [sic] and eroding the scope of the Clean Water Act?

Response: As I said in my written testimony, I am thankful for the dedicated professionals working within EPA's Office of Water for their service to this country and for their passion in delivering on the Agency's core mission of protecting public health and the environment every single day. America's drinking and surface water quality is much better today than at any point during the history of our Agency.

EPA is precluded from exceeding its authority under the CWA, Safe Drinking Water Act, and any other federal law the Agency administers to achieve specific scientific, policy, or other outcomes. The Agency can only exercise the authority that Congress delegates to it. EPA is not eroding the scope of the CWA, it is finally providing clarity and predictability tethered to a strong legal foundation that is designed to ensure protection of our nation's navigable waters, as Congress intended.

3. In your written testimony, you state that the purpose of Executive Order 13868 was to accelerate the construction of pipelines as it related to section 401 of the Clean Water Act. Isn't "acceleration to construct pipelines" just a code word for ignoring governing environmental protections to benefit industry polluters?

Response: No. EPA's section 401 rulemaking seeks to increase the transparency and efficiency of the 401 certification process and to promote the timely review of infrastructure projects, while continuing to ensure that Americans have clean water for drinking and recreation.

Question from Ranking Member Sam Graves (M0-06)

1. In Ms. Bellon's oral testimony, she stated that EPA recently repealed a water quality rule that the State of Washington spent ten years adopting that addresses water quality issues related to the State of Washington's citizens fish consumption. Can you explain how EPA's repeal of the State of Washington's previously adopted water quality standards is consistent with the concepts of cooperative federalism in the Clean Water Act which this Administration has asserted is a priority?

Response: EPA has not repealed and is not proposing to repeal any water quality rules that the State of Washington adopted. To the contrary, in May 2019, EPA approved a suite of Clean Water Act (CWA) human health criteria that were developed by the State of Washington through a lengthy stakeholder process. EPA had originally disapproved many of those criteria, but upon reconsideration, found the State's standards to be based on sound science and protective of the State's designated uses.

Because EPA approved Washington's criteria, EPA proposed to withdraw its corresponding federally-promulgated human health criteria for waters under the State of Washington's jurisdiction; EPA's final rule withdrawing the federal criteria was published in the *Federal Register* on May 13, 2020 (85 FR 28494). Once EPA's withdrawal of its federally-promulgated criteria goes into effect, the State of Washington's criteria will be effective for CWA purposes. EPA is respectful of the state's primary role in determining its water quality standards and its discretion in making resource- and risk-management decisions related to protecting the health of its citizens. This action will restore the balance mandated by the CWA, in which the states lead the standards-setting process.

Table A-6. Peak Flows Management Rulemaking Stakeholder List

Stakeholders	Stakeholders' Organization Affiliation
Gary Belan Meghan Boian	American Rivers
John Dyson	Aqua-Aerobic/WWEMA
Deborah LaVelle	Aquarius Technologies
Belinda Ayze	Arizona State University
Caleb Osborne	Arkansas Department of Environmental Quality
Alabama Alaska Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Julia Anastasio Kansas Kentucky Louisiana Maine Massachusetts Michigan Missouri New England Interstate Water Pollution Control Commission (NEIWPCC) New Jersey North Dakota Ohio Oklahoma Oregon Patrick McGuire Pennsylvania Sean Rolland South Carolina Texas Vermont Virginia Wisconsin	Association of Clean Water Administrators (ACWA)
Fred Andes	Barnes & Thornburg
Jim Fitzpatrick	Black and Veatch
Jake Callahan	Bloomington Normal WRD
Andrew Lukas Katherine Bell	Brown and Caldwell
Linda Hood	Campo Tribe
Mike Witt	Chasan, Lamparello, Mallon, Cappuzzo, PC
Kara Berst	Chickasaw Tribe
Ethan Schuth	Choctaw Nation

Table A-6 (continued)

Stakeholders	Stakeholders' Organization Affiliation
Scott Cummings	City of Auburn
Carol Haddock Shannon Dunne	City of Houston: Houston Public Works
Philip Goodwin Yvonne Forrest	City of Houston: Houston Water
Dave Wagner	City of Lawrence Kansas
Jody Bratton	City of Tacoma
Jennifer Peters	Clean Water Action
Carter Thomas	Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
Ben Husch	Conference of State Legislatures
Jennifer Perry	Connecticut Department of Energy and Environmental Protection
Andy Karellas	Council of State Government
Jack Peterson	County Executives of America
Jennifer Hindel	Creek Basin Sanitary District
Alec Marshall	Delaware Nation
Michael Bolt	Eastern Band of Cherokee Indians
Megan Swanson	Environmental Council of the States (ECOS)
George Vorsheim	EONE
Michael Casey Whittier Sergio Pinojelcic	Evoqua Water Technologies
Nancy Schuldt	Fond Du Lac Band of Lake Superior Chippewa
Beth Vogt	Fox River WRD, IL
Joseph Goergen	Genesee County Drain Commissioner Division of Water and Waste Services
Adrienne Nemura	Geosyntec Consultants
Edith Thomas	Gila River Indian Community
Maja Rodell	Gonzaga University School of Law
Sarah Sherwood	Gulkana Council
Gary Cohen John Hall	Hall & Associates
Saya Qualls	Hazen and Sawyer
Ryan Eisle Trent Stober	HDR Inc.
Ken Norton	Hoopa Valley Tribe
Amy Dragovich Jaime Rabins Sara Terranova	Illinois EPA
Elnardo Webster	Inglesino, Webster, Wyciskala, Taylor, LLC.
Jon Tack	Iowa Department of Natural Resources
John Siczka	Jacobs
Kellogg Schwab	John Hopkins Bloomberg School of Public Health
Aaron Witt Dan Ott Susan Pekarek Tami Lorenzen	Johnson County Wastewater
Rod Geisler Thomas Stiles	Kansas Department of Health and Environment

Table A-6 (continued)

Stakeholders	Stakeholders' Organization Affiliation
Francine Hackett	Kaw Nation
Chris Volcram-Hilditch	Lancaster Area Sewer Authority, PA
Caroline Moellering	Little Traverse Bay Bands of Odawa Indians
Jay Dahlberg	Lombard, IL
Wesley Sydnor	Louisville Metropolitan Sewer District
Mike Reilly	Maine Department of Environmental Protection
David Boyer Kevin Brander Matthew Sokop	Massachusetts Department of Environmental Protection
Crystal Davis	Meskwaki Tribe
MaryLynn Lodor	Metropolitan Sewer District of Greater Cincinnati
Jay Hoskins	Metropolitan St. Louis Sewer District
Byron Lane Charlie Hill Chris Alexander Phil Argiroff	Michigan Department of Environmental Quality (DEQ)
Melinda Rivera	Middletown Rancheria
Angela Falls Michael Abbott Paul Dickerson	Missouri Department of Natural Resources
Kimberly Miller	Morongo Tribe
Chris Hornback Cynthia Finley Nathan Gardner-Andrews	National Association of Clean Water Agencies (NACWA)
Julie Ufner	National Association of Counties
Matt Cowles	National Emergency Management Association
Alex Schaefer	National Governors Association
Carolyn Berndt Tanish DeLeon	National League of Cities
Becky Hammer Larry Levine	Natural Resources Defense Council (NRDC)
Gregory Bahe John Bates Sherwin Curley	Navajo Tribal Utility Authority
Tom Groves	New England Interstate Water Pollution Control Commission (NEIWPCC)
Hayley Franz Sterg Spanos Teresa Ptak Tracy Wood	New Hampshire Department of Environmental Services
Aaron Love Janice Brogle Michele Putnam Sue Savoca Susan Rosenwinkel	New Jersey Department of Environmental Protection (NJ DEP)
Pamela Elardo	New York City Department of Environmental Protection
Brian Baker	New York State Department of Environmental Conservation

Table A-6 (continued)

Stakeholders	Stakeholders' Organization Affiliation
Ed Hampston Ryan Waldron Shayne Mitchell	
Ken Clark	Nez Perce Tribe
Brian Dorn	North Shore WRD, IL
Frank Greenland	Northeast Ohio Regional District
Shellie Chard	Oklahoma Department of Environmental Quality
Vlad Dorjets	OMB
Levi Anderson	Twenty-Nine Palms Band of Mission Indians
Office of Information and Regulatory Affairs (OIRA) Office of Management and Budget (OMB)	Other Federal Agencies
Michael Witt	Passaic Valley Sewerage Commission
Ben Foss	Pedro Bay Village
Shaun Livermore	Poarch Creek Indians
Lisa Cylar Barrett	PolicyLink
Linda Nguyen	Red Cliff Tribe
Eileen Nunez	Redwood Valley Rancheria Pomo
Joe Haberek	Rhode Island Department of Environmental Management
Jeremy Fincher Dale Miller	Sac and Fox Nation
Eric Morrison	Salamatoff Tribe
Bill Johnson Robert Schlipf	San Franciso Regional Water Quality Control Board
Scott Bulgrin	Sandia Pueblo Tribe
Andrew Sweetman	Santa Ana Tribe
Dino C	Santa Clara Pueblo Tribe
Kathleen Brosemer	Sault Ste. Marie Tribe of Chippewa Indians
Barry Brock	Southern Environmental Law Center
Adam Vicory Alan Vicory Art Umble	Stantec Consulting
Mickey Nowak Temple Ballard Zachary Canfield	SUEZ Water Technologies and Solutions
Anne Baxter	Suquamish Tribe
David Galindo Firoj Vahora Mark Palmie	Texas Commission on Environmental Quality (TCEQ)
BryAnna Vaughan Cybill Berestoff Priscilla Evans Sarah Miller Brandie Radigan	Tribal Webinar Participant
Rene Rickard	Tuscarora Nation/Haudenosaunee
Judy Sheahan Richard Anderson	U.S. Conference of Mayors
Gregory Goblick	U.S. FDA
Jason Kesling	Upper Snake River Tribes Foundation
Reid Staton	Veolia

Table A-6 (continued)

Stakeholders	Stakeholders' Organization Affiliation
John Merrifield	Vermont Department of Environmental Conservation
Allan Brockenbrough Emilee Adamson	Virginia/ACWA
Laura Fricke	Washington Department of Ecology
Shin Joh Kang	Water & Energy Advisors, LLC
Vanessa Leiby John Dyson Ann Clements Celina Tabor	Water and Wastewater Equipment Manufacturers Association (WWEMA)
Rajendra Bhattarai Claudio Ternieden Chris Storey Tim Williams	Water Environment Federation (WEF)
Edda Mutter	Yukon River Inter-Tribal Watershed Council

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 29, 2020

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Environmental Protection Agency, I am enclosing responses to questions for the record following the October 23, 2019 hearing before the Senate Environment and Public Works Committee entitled "Improving American Economic Competitiveness through Water Resources Infrastructure: Federal Panel."

The responses to your questions are provided as an enclosure to this letter. If you have any further questions, please contact me, or you staff may contact Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at Kaiser.Sven-Erik@epa.gov or (202) 566-2753.

Sincerely,

Joseph A. Brazauskas, Jr.
Associate Administrator

Enclosure

cc: The Honorable Thomas R. Carper, Ranking Member

Senate Committee on Environment and Public Works
Hearing entitled, *"Improving American Economic Competitiveness through Water Resources Infrastructure: Federal Panel"*
October 23, 2019
Questions for the Record for Ms. Bertrand

Chairman Barrasso:

1. Section 5003 of AWIA authorized a pilot program to improve drinking water and wastewater infrastructure on Indian reservations in the Upper Missouri River and Upper Rio Grande basins. Could you update this Committee on the status of implementation of this program?

   EPA Response: My understanding is that your question refers to the America's Water Infrastructure Act (AWIA) section 2001, titled, "Indian Reservation Drinking Water Program." This section is subject to the availability of appropriations. Because EPA has not received appropriations, the Agency has not yet implemented this program.

2. What EPA programs from America's Water Infrastructure Act of 2018 (S. 3021) are currently being funded and implemented and which are not?

   EPA Response: On October 23, 2018, AWIA authorized over 30 new EPA water programs and activities. In Fiscal Year (FY) 2019, Congress did not appropriate specific funds for AWIA implementation. Even without AWIA specific funding, EPA is using some FY 2019 funding, available for two fiscal years, to work on several AWIA actions that align with the purposes of our FY 2019 appropriation.

   For example, EPA began the process of setting up the new grant programs authorized in AWIA so the Agency would be positioned to award any grant programs funded by Congress in the future. In March 2019, EPA issued new guidance on important changes AWIA made to the Drinking Water State Revolving Fund (DWSRF)[1] including American Iron and Steel provisions (sections 2002, 2015, 2022). EPA also issued a memorandum on May 24, 2019, updating implementation requirements of the Public Water System Supervision grant (section 2014). Using an existing mechanism, the Environmental Financial Advisory Board, EPA set up a stormwater infrastructure funding task force (section 4101). Also, in August 2019, EPA released the "Baseline Information on Malevolent Acts for Community Water Systems"[2] document to help drinking water systems develop risk assessments and emergency response plans (section 2013). Also, in August 2019, EPA issued guidance related to state emergency response commissions notifying state drinking water agencies and community water systems of hazardous substance releases (section 2018). In FY 2019, EPA also began implementing AWIA sections related to intractable water systems (section 2003), drinking water system consolidation

[1] https://www.epa.gov/sites/production/files/2019-03/documents/awia_dwsrf_implementation_memorandum.pdf
[2] https://www.epa.gov/waterriskassessment/baseline-information-malevolent-acts-community-water-systems

(sections 2009 and 2010), improving the accuracy and availability of drinking-water monitoring data (section 2011), asset management (section 2012), community water system risk and resilience (section 2013), monitoring for unregulated contaminants (section 2021), wastewater technology clearinghouse (section 4102), agreement with commissioner of reclamation (section 4301), and WaterSense (section 4306). Additional information about AWIA programs is available on EPA's website.[3]

In FY 2020, several AWIA programs, including Drinking Water Infrastructure Resilience (section 2005), Voluntary School and Child Care Program Lead Testing Grant Program Enhancement (section 2006), Sewer Overflow Control Grants (section 4106), Technical Assistance for Treatment Works (section 4103), Innovative Water Technology Grant Program (section 2007), and Water Infrastructure and Workforce Investment (section 4304), received appropriations and EPA is implementing these programs. Although several AWIA programs were funded in FY 2020, this funding is only for a subset of the over 30 new EPA water programs and activities authorized by AWIA.

3. In the Administration's budget request, which EPA programs from America's Water Infrastructure Act of 2018 (S. 3021) did the Administration request funding for?

EPA Response: As stated in the both the FY 2020 and FY 2021 President's Budget requests, EPA is focused on implementing several mandates included in AWIA, which strengthen the federal government's ability to invest in water infrastructure in every state, so that all Americans can have access to safe drinking water and to protect our Nation's waterways. AWIA strengthened many existing programs within EPA, while creating new programs to tackle significant public health concerns and environmental needs. In FY 2020 and FY 2021, the President's Budget requested funding to implement the following new AWIA programs: Drinking Fountain Lead Testing, Drinking Water Infrastructure Resilience, Sewer Overflow Control Grants, Technical Assistance for Treatment Works, and Water Infrastructure and Workforce Investment. The FY 2020 appropriation for EPA funded four out of five of these programs: Drinking Water Infrastructure Resilience, Sewer Overflow Control Grants, Technical Assistance for Treatment Works, and Water Infrastructure and Workforce Investment.

Ranking Member Carper:

4. AWIA made several changes to the Drinking Water State Revolving Loan Fund, including asking EPA to collect information on best management practices for SRFs, and required the EPA's national drinking water needs survey to include a report on lead pipes. To your knowledge, what is the status of the implementation of these changes? Has

[3] https://www.epa.gov/ground-water-and-drinking-water/americas-water-infrastructure-act-2018-awia

the data been collected? Will the National Drinking Water Survey include a report on lead pipes?

<u>EPA Response</u>: The Agency is actively implementing the AWIA changes to the DWSRF. On March 25, 2019, EPA issued an implementation memorandum to explain AWIA's statutory changes to DWSRF programs.[4] Per AWIA section 2015(g), the Agency will conduct an SRF best practices evaluation by October 23, 2021. As required by AWIA section 2015(e), EPA will design the next Drinking Water Needs Survey to include an estimate of replacement costs for lead service lines. The proposed revisions to the Lead and Copper Rule, published on November 13, 2019, also include a requirement for drinking water systems to create lead service line inventories. The Agency has already initiated work on the 2020 Drinking Water Needs Survey.

5. In AWIA, the Drinking Water State Revolving Fund included an increase for states in the amount of SRF loans they are required to make to economically disadvantaged communities, and permitted an additional 10 years for repayment of these loans to the state. How are these programs being implemented by EPA? Have you seen a quantifiable improvement in the ability of the Agency to address the needs of economically disadvantaged communities? What else could the Agency be doing to assist small and disadvantaged communities, and where do you see areas of improvement for your Agency to meet those needs?

<u>EPA Response</u>: On March 25, 2019, EPA issued an implementation memorandum to explain AWIA's statutory changes to DWSRF programs. These changes were effective upon enactment of AWIA. Per AWIA section 2015(d), states may now provide loan terms up to 30 years for any DWSRF eligible recipient or up to 40 years for state defined disadvantaged communities, or design life, whichever is less. Per AWIA section 2015(c), states must now provide at least 6 percent, but no more than 35 percent, of their annual federal capitalization grant as additional subsidy in the form of principal forgiveness, negative interest loans, or grants (or any combination of those) to state defined disadvantaged communities. State DWSRF managers have discretion to run their state's DWSRF program to meet the drinking water infrastructure related needs in their states. Many states are currently considering the amount of loan subsidy they will offer and whether to offer extended term loans. The program changes are still early in their implementation, so it is too early to assess the effectiveness of the changes.

EPA has also made available funding for the Small and Disadvantaged Assistance Grant authorized by section 2104 of the Water Infrastructure Improvements for the Nation (WIIN) Act. These funds will provide additional funding for small and disadvantaged drinking-water systems.[5]

[4] https://www.epa.gov/sites/production/files/2019-03/documents/awia_dwsrf_implementation_memorandum.pdf
[5] https://www.epa.gov/dwcapacity/wiin-grant-assistance-small-and-disadvantaged-communities-drinking-water-grant

6. Section 2020 of AWIA authorized $100 million in funding over two fiscal years to aid areas that, since January 1, 2017, have received a major federal disaster declaration due to devastation from a natural disaster and need help repairing their drinking water systems or hooking up to other ones to obtain potable drinking water. What kind of projects has the agency undertaken with this program, and how does the agency plan to strengthen the resiliency of drinking water systems given the increase in the frequency and severity of major weather events caused by climate change?

   <u>EPA Response</u>: EPA has not received appropriations to implement AWIA section 2020. However, EPA has several existing programs that seek to strengthen the resiliency of drinking water systems.

   Under federal homeland security guidelines, as described in Presidential Policy Directive 21, each of the 16 critical infrastructure sectors has a Sector-Specific Agency (SSA) which serves as the federal lead responsible for enhancing the sector's security and resilience. EPA serves as the SSA for the water sector and consequently implements specific statutory and Presidential directives relating to homeland security, critical infrastructure security, and resilience.

   On an annual basis, EPA trains over 5,000 water utilities, state officials, and federal emergency responders to increase the resiliency of the water sector to any natural or manmade incident that could endanger water and wastewater services. EPA provides an array of tools and training to reduce the risks to water utilities from natural disasters. These include:

   - **The *Flood Resilience Guide*,[6] which aids water utilities in determining the risk to flooding and identifying specific capital improvements (and funding sources) to mitigate the risk;**

   - **The *Creating Resilience Evaluation and Assessment Tool (CREAT)*,[7] which helps utilities to adapt to extreme weather events by better understanding current and long-term weather conditions;**

   - **The *Resilient Strategies Guide*,[8] which includes an interactive map with nationwide examples of adaptation measures; and**

   - **Direct technical assistance to water and wastewater utilities in using the above tools.**

   EPA also awards grants to nonprofit organizations to provide training and technical assistance to small public water systems and small wastewater systems to strengthen technical capacity, enable systems to comply with regulatory

[6] https://www.epa.gov/waterutilityresponse/flood-resilience-basic-guide-water-and-wastewater-utilities
[7] https://www.epa.gov/crwu/creat-risk-assessment-application-water-utilities
[8] https://www.epa.gov/crwu/resilient-strategies-guide-water-utilities#/

requirements, and support systems in becoming more resilient to natural disasters.

Water infrastructure upgrades can also be funded through EPA infrastructure programs that have received appropriations, such as the Clean Water and Drinking Water State Revolving Funds, Water Infrastructure Finance and Innovation Act (WIFIA) loans, Water Infrastructure Improvements for the Nation Act (WIIN) grants, and new AWIA grant programs. EPA requested funding for each of these programs in the Agency's FY 2020 and 2021 President's Budget Requests.

7. The American Society of Civil Engineers (ASCE), in a recent report, found that due to our failing infrastructure and increased costs of operation, utilities across the United States will need more than $630 billion over the next 20 years to simply maintain current levels of service. Both the Drinking Water and Clean Water SRFs are currently funded at levels far below those necessary to meet the needs of our utilities. Given the current shortfall and the predicted increase in cost over the next 20 years, do you think it imperative that Congress increase funding levels for both the Clean Water and Drinking Water SRFs?

EPA Response: The FY 2020 appropriation includes over $2.7 billion in funding for the State Revolving Funds (SRFs): $1.6 billion for the Clean Water State Revolving Fund (CWSRF) and $1.1 billion for the DWSRF. The FY 2020 appropriation is a significant national investment in the Clean Water and Drinking Water SRFs and will be combined with other SRF funds (e.g., state contributions, loan repayments) to finance high priority projects that address water quality and public health. In addition, EPA is working to advance innovative financing for water infrastructure projects by also implementing the WIFIA program, a federal loan program available for both public and private entities. As of July 15, 2020, the WIFIA program has closed 24 loans totaling $5.3 billion in credit assistance to help finance $11.7 billion for water infrastructure projects and create over 25,000 jobs. Furthermore, utility needs can be addressed through a variety of other sources of financing such as local bonds, state grant and loan programs, private financing, and increased user fees.

8. The Clean Water State Revolving Fund was last reauthorized in 2014 and needs to be addressed for the 2020 bill. Do you believe that the Clean Water State Revolving Fund should be reauthorized and what, if any, changes would you recommend to the program to support small and disadvantaged communities?

EPA Response: For over three decades, the CWSRF has served as an effective and affordable source of funding for addressing our nation's infrastructure and other water quality needs. Cumulatively, the CWSRF has provided over $138 billion in low cost funding for over 41,200 projects that improved wastewater infrastructure, addressed stormwater runoff, promoted water and energy efficiency, and mitigated nonpoint source pollution. The statute provides the CWSRF with great flexibility in

terms of project eligibility and offering financial assistance. Eligible borrowers can range from large municipalities to small communities.

This flexibility provides the CWSRF with many tools to support small and disadvantaged communities. The CWSRF can set interest rates and loan terms to best meet the needs of potential borrowers. In addition, the CWSRF can provide additional subsidization in the form of principal forgiveness, negative interest loans, and grants. Each state has developed affordability criteria, and one eligible use of additional subsidization is to assist borrowers that meet these criteria. A state CWSRF program can use its administrative set-aside to provide technical assistance to small and disadvantaged communities to help remove potential barriers in securing CWSRF financial assistance. As a result, the CWSRFs have been able to provide over $31 billion to over 27,900 projects serving populations less than 10,000.

In May 2016, EPA delivered a Report to Congress that explored potential options for updating how CWSRF funds are allotted to the states.[9] EPA will continue to implement the SRFs subject to congressional authorization and funding.

Senator Booker:

9. In response to a charge from the EPA, the National Environmental Justice Advisory Council (NEJAC) published a report in 2018 titled, "EPA's Role in Addressing the Urgent Water Infrastructure Needs of Environmental Justice Communities." What steps is the EPA taking to meet the goals outlined by the report?

   EPA Response: EPA appreciates the NEJAC's feedback on how the Agency may better assist communities with identifying opportunities for financing water infrastructure projects, as well as ways to ensure communities have clean, affordable water and sanitation. It is important that EPA share tools and best practices to assist communities with developing the capacity to address their water infrastructure and sanitation challenges. These approaches are incorporated into work that EPA is doing with states and communities.

   a. Under the first goal, NEJAC "strongly recommends EPA take several steps to treat water as a human right." What is EPA doing to change policy, culture, or enforcement toward that goal? If EPA is not yet doing anything to treat water as a human right, what are three things the Office of Water or the EPA Administrator could do within the next three years to advance EPA's treatment of water as a human right?

      EPA Response: EPA is committed to ensuring all Americans have access to clean water. The Agency has identified priority activities that support improvements in affordability, accessibility, and sufficiency.

[9] https://www.epa.gov/sites/production/files/2016-05/documents/review_of_the_allotment_of_the_cwrsf_report.pdf

EPA is evaluating how communities are assessing affordability of water services, looking both at larger communities' ability to pay, as well as smaller communities' ability to pay, for water services that meet public health and environmental standards.

Access to safe drinking water and adequate sanitation is increased through the SRFs and the WIFIA loan program. For example, almost 11,000 DWSRF assistance agreements have been made for drinking water systems serving populations of 10,000 or fewer, for a total investment of over $14 billion.

EPA is helping to ensure water sufficiency and reliability now and in the future for all communities through the promotion of water reuse. Water reuse—sometimes referred to as water recycling—is an innovative and dynamic strategy that can dramatically change the future of water availability in the United States and improve the security, sustainability, and resilience of our nation's water resources. Through the National Water Reuse Action Plan, released on February 27, 2020,[10] the Agency, along with our federal, state, local, and water sector partners, seeks to foster greater consideration of water reuse across the water sector, such as agriculture, industry, potable water, national security, environmental restoration, and more.

b. The NEJAC recommended that EPA set a Household Action Level for lead when it revised the lead and copper rule. The recent proposed rule omits a Household Action Level. How does EPA propose to respond to action level exceedances at individual households? Will EPA be implementing this recommendation in a separate rulemaking?

<u>EPA Response</u>: On November 13, 2019, EPA published proposed revisions to the 1991 Lead and Copper Rule (LCR).[11] This action represents the first major overhaul of the LCR in nearly 30 years. The Agency's proposal takes a proactive and holistic approach to reducing lead in the nation's drinking water —from testing to treatment to telling the public about the levels and risks of lead in drinking water. The proposal requires more water systems to act sooner to reduce lead levels and protect public health, improves transparency and communication, and better protects children and the most at-risk communities.

To address elevated levels of lead at individual households, EPA proposed "find and fix" requirements in the proposed LCR revisions. Under the proposal, when a tap sample exceeds 15 ug/L of lead, the water system would be required to provide the test results to consumers where the sample was collected within 24 hours, conduct additional sampling at the location of the elevated lead levels, identify the potential cause of the elevated lead levels,

[10] https://www.epa.gov/waterreuse/water-reuse-action-plan
[11] www.epa.gov/safewater/LCRproposal

and take action to fix the cause of the elevated lead levels. This is a significant improvement to the 1991 Rule. The Agency is considering the public comments on the proposed LCR revisions and intends to promulgate final revisions in 2020.

c. Under Goal #3, the NEJAC recommends that EPA's 1997 guidelines should be updated to better account for the burden on poor households and costly infrastructure projects for federal clean water compliance. What is EPA planning to do to address this recommendation?

EPA Response: EPA is evaluating how communities are assessing affordability of water services (including drinking water, wastewater, and/or stormwater) that look both at larger communities' ability to pay, as well as smaller communities' ability to pay, for water services that meet public health and environmental standards. EPA will be seeking input in the next few months on the flexibilities that are available in the current guidelines.

d. In continuing the improvement of EJSCREEN, is EPA considering including additional indicators like data on drinking water?

EPA Response: EPA continually assesses available water data, as well as other environmental justice related datasets, for use in EJSCREEN.

10. The National Environmental Justice Advisory Council (NEJAC) submitted a letter to the EPA Administrator on August 14th, 2019 stating concerns with the lack of attention to environmental justice in NEPA analyses. What steps is EPA taking to address the concerns that NEJAC raises about inadequate Health Impact Assessments?

EPA Response: EPA responded to the National Environmental Justice Advisory Council's (NEJAC) concerns by affirming EPA's commitment to assisting other federal agencies in adequately considering environmental impacts in the decision-making process. The Agency has taken steps to increase early engagement with federal agencies to help identify potential issues. Identification of issues, such as environmental justice considerations, at early stages provide increased opportunities to avoid or minimize adverse impacts while continuing to meet project purposes and the needs of the nation.

11. The most recent report to Congress on the Clean Watersheds Needs is based on a 2012 survey and was reported to Congress in 2015. Section 516 of the Clean Water Act mandates EPA "shall make… a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the states and of the cost of construction of all needed publicly owned treatment works in each of the States…" 33 U.S.C. § 1375(b)(1)(B). The Clean Water Act directs that the EPA Administrator "shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year." 33 U.S.C. §

1375(b)(1).

a. Please explain why EPA has not submitted revised estimates by February 2017 and February 2019.
b. When will Congress receive the overdue reports?
c. What steps has EPA taken to assist small and rural utilities with low staffing capacity or volunteer staff are able to accurately estimate their long-term capital needs?
d. What steps has EPA taken to ensure the next Clean Watersheds Needs Assessment reflects additional costs for utilities to adapt to or mitigate for climate change?

EPA Response: EPA is currently developing the next iteration of the Clean Watersheds Needs Survey (CWNS). The FY 20 appropriation provides funding to develop the next CWNS and EPA is moving forward with planning and implementation.

States can use CWSRF administration funds for technical assistance to accurately estimate long-term capital needs for small and rural utilities.

Resiliency projects have always been eligible for CWSRF assistance. Many projects funded by the SRFs have resiliency components embedded within them. The Water Resources Reform and Development Act of 2014 included several new eligibilities for CWSRF resiliency projects. In the document titled, "*An Overview of CWSRF Eligibilities*," [12] EPA describes the types of climate resilience projects eligible for clean water SRF assistance. Any future assessment of capital needs will include the additional resiliency cost estimates. In addition, resiliency projects are also eligible to receive WIFIA loans.

12. In the United States, more than half a million households, or roughly 1.4 -1.7 million people, lack access to complete plumbing facilities, defined by the Census as access to hot and cold running water, a flush toilet, and a bathtub or shower. There is a statistically significant correlation between lack of access to sufficient sanitation and race and ethnicity. Overall, American Indian and Alaskan Native communities are most likely to lack access to plumbing in the United States, with 4.4 percent of households lacking plumbing. Furthermore, these statistics do not capture all of the Americans who are routinely exposed to raw sewage inside or outside of the home due to failing or inadequate sewer systems or onsite wastewater systems, such as residents in the majority African American communities of Lowndes County, Alabama or Centreville, Illinois.

    a. Does the EPA have a plan to address these disparities?

    EPA Response: EPA is committed to ensuring all Americans have access to clean water. The Agency has identified priority activities that support improvements in affordability, accessibility, and sufficiency.

[12] https://www.epa.gov/cwsrf/overview-clean-water-state-revolving-fund-eligibilities

EPA appreciates feedback, like that from the NEJAC, on how the Agency may better assist communities with identifying opportunities for financing water infrastructure projects, as well as ways to ensure communities have clean, affordable water and sanitation. It is important that EPA share tools and best practices to assist communities with developing the capacity to address their water infrastructure and sanitation challenges. These approaches are incorporated into work that EPA is doing with states and communities.

EPA is evaluating how communities are assessing affordability of water services, looking both at larger communities' ability to pay, as well as smaller communities' ability to pay, for water services that meet public health and environmental standards.

Access to safe drinking water and adequate sanitation is increased through the SRFs and the WIFIA loan program. For example, almost 11,000 DWSRF assistance agreements have been made for drinking water systems serving populations of 10,000 or fewer, for a total investment of over $14 billion.

EPA is helping to ensure water sufficiency and reliability now and in the future for all communities through the promotion of water reuse. Water reuse—sometimes referred to as water recycling—is an innovative and dynamic strategy that can dramatically change the future of water availability in the United States and improve the security, sustainability, and resilience of our nation's water resources. Through EPA's National Water Reuse Action Plan,[13] the Agency seeks to foster greater consideration of water reuse across the water sector, such as agriculture, industry, potable water, national security, environmental restoration, and more.

b. Does EPA have data on the problem of failing or inadequate onsite wastewater systems or sewer systems that expose Americans to raw sewage in homes or yards? If not, what does EPA view as the data gaps regarding this problem? Does EPA believe a new Census and/or American Community Survey question is needed on this issue?

<u>EPA Response</u>: EPA does not have recent national scale data specific to failure rates. To address this data gap, in September 2018, EPA and the U.S. Department of Agriculture (USDA) submitted a proposal to add a new question to the American Community Survey (ACS) on septic system use. Elements of the proposal were accepted to move forward into the ACS testing phases.

13. Boil water advisories are a daily occurrence in the United States, and they disproportionately impact small drinking water systems, with some advisories in rural

[13] https://www.epa.gov/waterreuse/water-reuse-action-plan

areas lasting for years.

a. What data does EPA have on this problem?
b. What are the data gaps EPA has identified?
c. What steps is EPA taking to address to reduce the number and frequency of boil water advisories?

EPA Response: EPA's Public Notification Rule requires public water systems to notify customers when public water systems violate a National Primary Drinking Water Regulation (NPDWR), or when situations arise that have the potential to impact public health. Public notices must include information on whether alternative water supplies should be used and what actions consumers should take, including boiling water in certain circumstances. Most states have primary enforcement responsibility for their public water systems, and states work with their systems directly to identify situations when public notices are necessary, including issuing "boil water advisories." Violations of NPDWRs, including failure to provide public notice when required, is tracked in EPA's Safe Drinking Water Information System. However, boil water advisories are issued by local authorities, and EPA does not track those notices.

Maintaining the integrity of the distribution system is important to ensuring the protection of public health from microbial contamination in drinking water and helps address conditions that may lead to boil water advisories. EPA's DWSRF program assists communities with infrastructure financing, including the repair and replacement of aging infrastructure such as distribution system pipe. Transmission and distribution systems represent the largest drinking water infrastructure project category funded through the DWSRF. Approximately half of DWSRF assistance provided in 2018 went to these types of projects. EPA also provides support to states and water systems through technical assistance and training to implement the Revised Total Coliform Rule (RTCR). The RTCR uses a "find and fix" approach to help water systems identify conditions within the distribution system that, if not addressed, could lead to health risks from contaminants such as *E. coli.*

Senator Braun:

14. What do you see as the biggest problem that the EPA is currently facing regarding invasive species management?

EPA Response: One of the most significant problems is the introduction of invasive species present in the ballast water discharges of vessels. Vessels often take ballast water from one ecosystem and discharge it into another. If this ballast water is not properly managed, invasive species can be introduced into an ecosystem with potentially damaging consequences. To continue to address this problem, EPA, along with the U.S. Coast Guard, are developing standards and implementing regulations under the Vessel Incidental Discharge Act (VIDA), enacted in December

2018 (Public Law No. 115-282). The Act requires EPA and Coast Guard to develop national vessel discharge standards for ballast water and other pollutants by December 2022 (EPA standards by 2020 and Coast Guard implementing regulations by 2022).

15. In your view, what are the three most challenging aquatic invasive species? Do you see the EPA making progress in managing and controlling these species?

EPA Response: The most challenging invasive species depends on the region or ecosystem. In the Great Lakes, for example, sea lamprey, "Asian carp" (i.e., bighead and silver carp), and invasive mussels (Quagga and Zebra mussels) are some of the most challenging to manage and control. EPA is making progress to reduce these species in the Great Lakes. The Great Lakes Restoration Initiative Action Plan III[14] describes progress made to date and future actions to combat invasive species.

16. Are there ways in which the EPA could better partner with state and local landowners to monitor and take steps to eradicate invasive species?

EPA Response: EPA already partners with states and other stakeholders and these partnerships will continue. For example, EPA is a member of the Great Lakes Aquatic Nuisance Species Panel, a collection of federal, state, nongovernmental organizations, and academic institutions that meets semi-annually to communicate and coordinate on invasive species issues. In addition, the EPA-lead Great Lakes Restoration Initiative funds state, tribal, and local agencies and nonprofit organizations in their efforts to control invasive species, including, in some cases, projects that work on private lands.

[14] https://www.epa.gov/sites/production/files/2019-10/documents/glri-action-plan-3-201910-30pp.pdf